

BORA LASKIN LAW LIBRARY



3 1761 09571085 1





TABLE OF CONTENTS

19  
4945

8296

Section 1: Materials Supplementary to Syllabus page 1, viz.  
"Introduction - Some Typical Problems in Modern Public  
Law."

1. The Wheat Board Case.

(a) The real life facts.

Extract from an article, "The Nolan Case" 1-1

(b) The decision of the Supreme Court of Canada.

Canadian Wheat Board v. Nolan. 1-5

(c) The decision of the Privy Council.

Attorney-General for Canada v. Mallett & Carey 1-15

(d) The statute interpretation mess; herein of many  
things, including the rule against legislative history  
and a possible compromise solution.

Legislative history and the Wheat Board case. 1-19

Note by Professor Laski on the judicial  
interpretation of statutes. 1-27

Comment by John Willis on the decision of the  
Supreme Court in the Nolan Case. 1-30

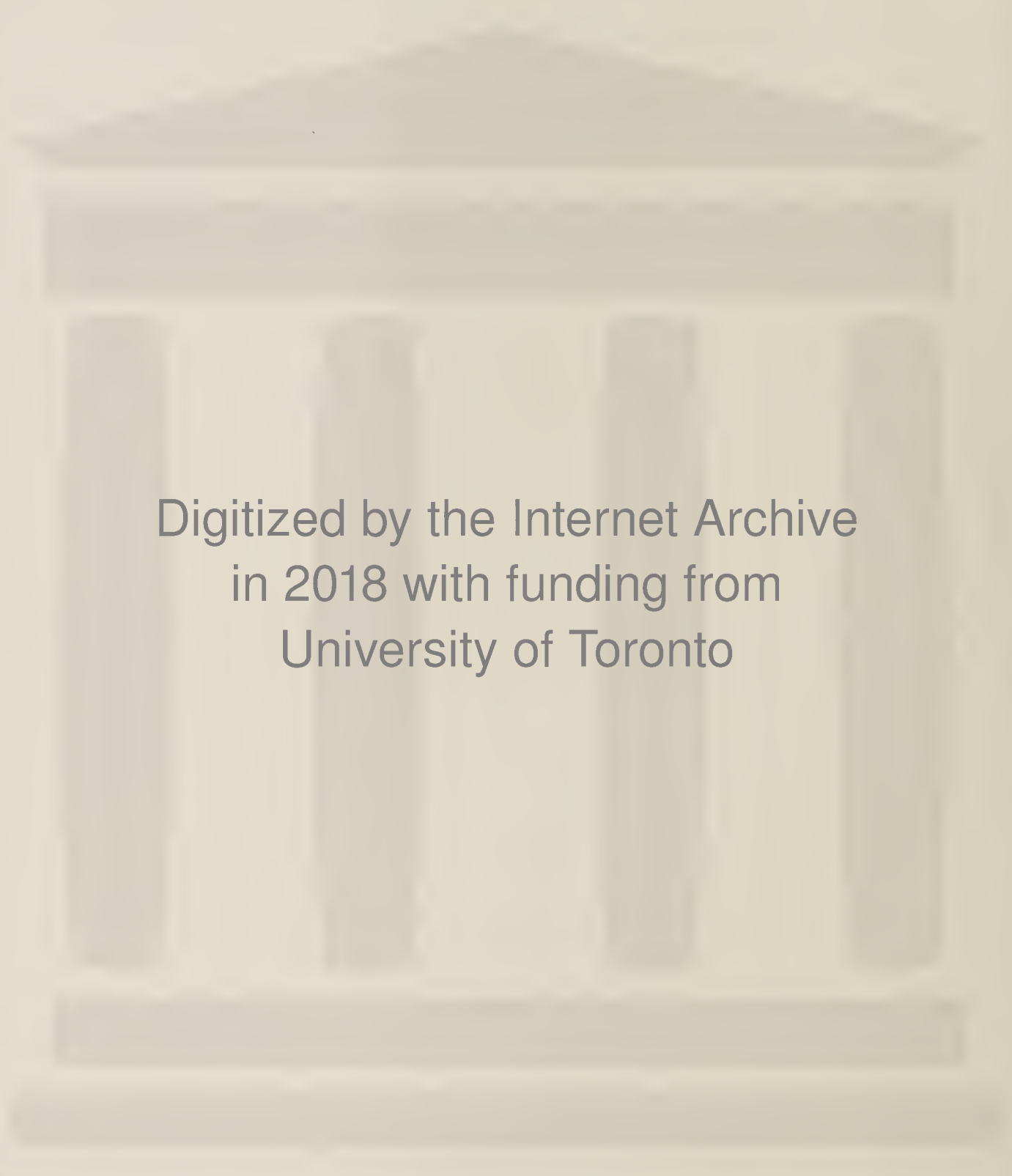
Comment by D.A. MacGibbon on the decision of the  
Supreme Court and the decision of the Privy Council  
in the Nolan Case. 1-36

(e) Some fundamental issues raised by the Nolan Case,  
including the role of courts and lawyers in twen-  
tieth century government, changing attitudes  
towards the age-old problem of public claims  
versus private claims, and many other things.

Correspondence between Messers Kent Power, Fillmore  
and Willis on some of the issues raised by the  
Willis note on the Nolan decision of the Supreme  
Court that has been reproduced above. 1-40

2. The Roncarelli Case.

(a) The case itself.



Digitized by the Internet Archive  
in 2018 with funding from  
University of Toronto

<https://archive.org/details/publicauthoritie00will>

W734

Roncarelli v. Duplessis.

1-53

- (b) The statute interpretation point; how the court gets around the wide words "The Commission may cancel any permit at its discretion."

Extracts from note by Professor McWhinney on the Roncarelli Case.

1-59

Note on the way the English courts have handled similar wide words.

1-61

- (c) The tort point; in improperly revoking Roncarelli's licence, what common law tort did Archambault and/or Duplessis commit so as to render Duplessis liable to pay him damages?

Extract from an article by Amnon Rubenstein on liability in tort of judicial officers.

1-63

Asoka Kumar David v. Abdul Cader

1-66

- (d) A consideration, in the context of the tort liability of judicial officers, of (i) the weasel concept "judicial" and (ii) the weasel concept "jurisdiction".

- (i) The weasel concept "judicial".

O'Connor v. Waldron

1-68

Everett v. Griffiths

1-70

- (ii) The weasel concept "jurisdiction."

Harris v. Law Society of Alberta

1-71

Revesz v. Commonwealth of Australia.

1-75

### 3. The Communist Case.

Smith & Rhuland v. The Queen.

1-77

Judicial policy-making in labour relations, a comment by Professor Friedmann on the case.

1-83

Extract from "Law, Opinion and Administration, a comment by Professor Wade on Professor Kenneth Culp Davis' strictures on the attitude of the English to judicial policy-making.

1-85

### 4. The Catchment Board Case.

East Suffolk Catchment Board v. Kent

1-88





Lord Denning on the Catchment Board Case	1-92
Professor Friedmann on the Catchment Board Case	1-93
 <u>Section 2; Materials Supplementary to Syllabus Pages 20 to 39, viz. to Chapter Two Part I entitled "Changes in the Machinery of Government".</u>	
 1. <u>In general.</u>	
The agenda of the McRuer Commission on Civil Rights.	2-1
A minority comment on currently popular moves for law reform in the administrative law field.	2-3
 2. <u>Delegated legislation.</u>	
Delegated legislation in Canada; recent changes in machinery.	2-7
 3. <u>Administrative Tribunals.</u>	
(a) <u>Are they a "good thing" or a "bad thing"?</u>	
Administrative tribunals and their function in a legal system.	2-12
(b) <u>Judicial review; herein also of privative clauses.</u>	
The administrator as judge; the citizens right to an impartial tribunal.	2-19
Appeals against administrative decisions; in search of a basic policy.	2-27
Privative clauses.	2-36
 4. <u>"Ministerial discretions" and the Ombudsman.</u>	
Ministerial discretion in tax cases assailed.	2-41
Measure to establish office of parliamentary commissioner.	2-42
Extracts from "An Ombudsman for Canada".	2-50
The New Zealand Ombudsman report 1964	2-60
 5. <u>A look at the whole problem by a Canadian law teacher turned political scientist who is now a University President.</u>	
Controlling the administrative machine.	2-64

Section 3. Materials Amplifying or Supplementing Some of Those on Pages 70 to 85 of the Syllabus, viz., Part II. Interpretation of Statutes.

Chapter I - Judicial Approach to all types of Act.

(a) General considerations.

Extract from Roscoe Pound's article on "Common Law and Legislation" 3-1

Salamon v. Salamon 3-1

Seaford Court Estates v. Asher 3-1

Magor and St. Mellons v. Newport. 3-3

Extract from Geoffrey Marshall's article on "Pluralist Principles and Judicial Policies" 3-5

(b) The grammatical rules of construction.

R. v. Rouse 3-6

Extract from Thurman Arnold's Symbols of Government 3-9

United Towns Electric v. A.-G. for Newfoundland 3-11

(c) Some typical statute interpretation cases assigned as exercises.

R. v. Jones 3-13

James v. Commonwealth of Australia 3-15

R. v. Williamson 3-16

(d) The statutory "purpose rule" versus the common law "presumptions".

1. General considerations.

Interpretation Act 3-18

Extract from Keir & Lawson's Cases in Constitutional Law 3-18

2. The Bachand Case and Liversidge v. Anderson.

(a) The Bachand Case.

Extract from Case Comment by R. M. Willes Chitty 3-19

Re Bachand v. Dupuis 3-22



(b) The Liversidge Case.

Liversidge v. Sir John Anderson	3-26
Nakkuda Adi v. Jayaratne	3-34
Extracts from Lord Chorley's article, "Law-Making in Whitehall"	3-35

3. Two recent problem cases.

Case Comment on Commissioners of Customs and Excise v. Cure and Deeley	3-38
A.-G. for N.Z. v. Lower Hutt Corporation	3-41

Chapter II. Recurrent problems of Statute Interpretation; herein of the special position of the Crown and of miscellaneous problems relating to the statutory duties of public authorities.

(i) The Crown.

(a) The Crown and Statutes.

R. v. Rhodes	3-47
Re Gay	3-48
Extracts from Professor Friedmann's article on "The legal status of the Crown"	3-50
Schwella v. The Queen	3-52

(b) The right of the Crown to withhold evidence.

Re Grosvenor Hotel	3-53
Who is to decide what the public interest requires	3-57

(c) The liability of the Crown in tort.

The Queen v. Nisbet Shipping Co.	3-59
Cleveland-Cliffs Steamships Co. v. The Queen	3-61

(d) The liability of the Crown in contract.

The Amphitrite	3-63
Dominion of Canada v. City of Levis	3-64

(e) Who is the Crown so as to be entitled to the privileges and immunities thereof?

Extract from Professor Sawyer's article, "Shield of the Crown Revisited" 3-69

Extract from Mr. T. H. Wilson's Case Comment on "Crown Agencies" 3-70

(ii) Miscellaneous problems relating to the statutory duties of public authorities.

(a) Duty or discretion?

Lake Champlain & St. Lawrence Ship Canal v. R. 3-73

Brown v. City of Hamilton 3-78

(b) Statutory negligence--sanctions--a damage action?

Dawson v. Bingley Urban District Council 3-79

Baker v. City of Toronto 3-81

(c) Mandatory or directory--sanctions--nullification of the proceedings or transaction?

R. v. McDevitt 3-83

Regina v. Steeves 3-84

(d) "Contracting out"; herein also of the "rule against fettering a discretion by contract".

Extract from Mr. David A. Brown's Case Comment on waiver of benefit of statute 3-86

Maritime Electric v. General Dairies 3-90

Commissioners of Crown Lands v. Page 3-93

The King v. Dominion of Canada Stamp Vending Machine 3-96

Woon v. M.N.R. 3-98

Section 4. Materials Amplifying and Supplementing those on pp. 86-95 of the Syllabus.

Part III. Judicial control of administrative action.

Chapter 1. General principles governing all statutory discretions.

Section 1. Duty to exercise the discretion personally--delegation--acting on orders.

Extracts from John Willis' article "Delegatus non potest delegare" 4-1

(a) The Cabinet.

Reference re Regulations (Chemicals)	4-4
A.-G. of Canada v. Brent	4-8

(b) Municipal Councils--licensing systems.

R. v. Sepanary	4-10
R. v. Campbell	4-11
Re Davies and Forest Hill	4-12
Mills v. L.C.C.	4-15

(c) Administrative Boards.

Allingham v. Minister of Agriculture	4-16
L.R.B. Sask. v. Speers	4-18

(d) Ministers (or in plain English, civil service departments).

Yasny v. Lapointe	4-22
Lewisham Borough Council v. Roberts	4-26
Wright's Canadian Ropes v. M.N.R.	4-30

(e) Acting on the orders of another.

Note by Professor Robson on Simm's Motor Units Case	4-31
R. v. Stepney Corporation	4-34

Section 2. Duty to exercise legislative discretion  
generally and judicial discretion  
specifically.

(a) Legislative discretion--herein also of "discriminatory" and "uncertain" by-laws.

Verdun v. Sun Oil	4-36
Re Smeaton and Shoal Lake	4-38
Municipal Act, sec. 242 (2)	4-41
Re Joy Oil Co. and Toronto	4-41
Re Bruce and Town of Cobourg	4-44
Fawcett Properties v. Buckingham	4-45



- (b) Judicial discretion--having a policy; herein also of the limits on using mandamus to control the exercise by deciding officers of their powers to decide.

R. v. Torquay Licensing Justices 4-47

R. v. Provincial Secretary, Ex parte Walden 4-50

- (c) Duty to exercise the discretion honestly--"discrimination", "favouritism" and "private interest" in municipal affairs.

Re Howard and City of Toronto 4-52

Metropolitan Stores v. City of Hamilton 4-53

Section 4. Duty to exercise the discretion for the purpose for which it was granted and for no other purpose--"collateral motives". Duty to decide the question of fact or question of law entrusted to the tribunal and no other question--"extraneous circumstances"--"irrelevant considerations". The thin line dividing "irrelevant considerations" from "wrong decision of law", from "wrong decision of policy" and from "wrong decision of fact."

- (a) "Collateral motives" and "extraneous or irrelevant considerations" in general.

Extract from Professor de Smith's article on "The Abuse of Statutory Powers" 4-56

Orpen v. A.-G. for Ontario 4-57

Shawn v. Robertson 4-61

- (b) Extraneous considerations "distinguished" from wrong decision on law. 4-65

R. v. Agricultural Land Tribunal 4-65

Case Comment by D. M. Gordon Q.C. on the Globe & Mail Case 4-67

- (c) Extraneous considerations "distinguished" from wrong decision on policy.

Associated Pictures v. Wednesbury Corporation 4-70

Estate and Trust Agencies v. Singapore 4-73

Evans v. Collins 4-77

- (d) Deciding without sufficient evidence "distinguished" from "denial of natural justice" and from "wrong decision on collateral matters".

The King v. Nat Bell Liquors	4-79
Re Nelson	4-80
J.G. Pink on "The jurisdictional fact ground for avoidance of privative clauses"	4-81
Parkhill Bedding v. International Molders	4-83

## Chapter II

(Omitted)

## Chapter III. The Minimum Procedural Decencies

### (a) Judicial control of administrative procedure-- general considerations.

Extracts from John Willis' article on "Administrative Law and the B.N.A. Act"	4-88
A note by R. M. Jackson on "The Canadian Bill of Rights"	4-90
Maclean v. The Worker's Union	4-94
Comments by Professor Bernard Schwarz on Board of Education v. Rice and the Arlidge Case	4-97

### (b) Certiorari and the right to a hearing; "judicial functions".

#### (i) Finality

Guay v. Lafleur	4-99
-----------------	------

#### (ii) "Having the duty to act judicially."

Re Brown and Brock	4-105
Lee Wing v. Peter Don Chang	4-108

#### (iii) "Right to a hearing".

Calgary Power v. Copithorne	4-111
Ridge v. Baldwin	4-115
Comment by Professor de Smith on Ridge v. Baldwin	4-122

### (c) "Bias".

Re Township of York By-law	4-125
Re Stoller	4-127

Comment by Professor Harry Arthurs on Bias in the  
Tripartite Tribunal 4-131

Franklin v. Minister of Town Planning 4-133

(d) Nature of hearing required.

R. v. Pantelidis 4-136

Comment by Professor Charles Bourne on the Bill of  
Rights and administrative tribunals 4-140

St. John v. Fraser 4-142

Re Toronto Newspaper Guild 4-145

University of Ceylon v. Fernando 4-148

Re Ontario Crime Commission 4-150

Perepolkin v. Superintendent of Child Welfare 4-155

Comment on the rules of evidence and natural justice. 4-161

(e) A comment on the panorama of natural justice.

Why are the cases on natural justice confused and  
uncertain. 4-162